Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 89-44

In The

Supreme Court of the United States

October Term, 1989

DENNIS BURNHAM,

Petitioner,

vs.

CALIFORNIA SUPERIOR COURT, COUNTY OF MARIN,

Respondent.

FRANCIE BURNHAM,

Real Party in Interest.

On Writ Of Certiorari
To The California Court Of Appeal
First Appellate District, Division Five

JOINT APPENDIX

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Petition For Certiorari Filed July 12, 1989
Certiorari Granted October 2, 1989

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37 pp

INDEX

Page

Chronological List of Relevant Docket Entries 1

Petition For Legal Separation, filed January 5, 1988 5

Original Summons And Proof Of Service, filed February 4, 1988 8

Husband's Notice Of Motion To Quash Service Of Summons/Dismiss The Action, filed April 12, 1988 10

Excerpts From Husband's Declaration In Support Of Husband's Motion To Quash Service/Dismiss Action, filed April 12, 1988 11

Excerpts From Wife's Declaration In Opposition To Motion To Quash Service Of Summons, filed June 23, 1988 15

Findings And Order After Hearing On Motion To Quash Service Of Summons/Dismiss The Action, filed September 8, 1988 21

Excerpts From Husband's Declaration In Support Of Husband's Response To Wife's Motion Re Reconsideration, filed September 28, 1988 23

Order Granting Motion For Reconsideration, Vacating September 8 Order, And Denying Motion To Quash, filed October 5, 1988 26

Excerpts From Wife's Declaration In Opposition To Husband's Motion For Reconsideration/Clarification, filed October 24, 1988 27

Excerpts From Husband's Reply In Support Of His Motion For Reconsideration/Clarification, filed October 27, 1988 30

Order Denying Husband's Motion To Reconsider, filed November 4, 1988 33

Decision By The Court of Appeal Denying Husband's Petition For Writ Of Mandate, filed April 7, 1989 34

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES[1]

Docket No.

1. January 5, 1988 – Petition For Legal Separation.
2. February 4, 1988 – Original Summons And Proof Of Service.
3. April 12, 1988 – Husband's Notice Of Motion To Quash Service Of Summons/Dismiss The Action.
4. April 12, 1988 – Declaration Of Husband In Support Of Motion To Quash Service/Dismiss Action.
5. April 12, 1988 – Husband's Memorandum Of Points And Authorities In Support Of His Motion To Quash Service Of Summons/Dismissal Of The Action.
6. June 23, 1988 – Declaration Of Wife In Opposition To Motion To Quash Service Of Summons.
7. June 23, 1988 – Declaration Of Tracy R. Kirkham In Response To Motion To Quash Service Of Summons.
8. June 23, 1988 – Wife's Memorandum Of Points And Authorities In Opposition To Husband's Motion To Quash Service Of Summons.
9. June 27, 1988 – Husband's Reply In Support Of His Motion To Quash Service Of Summons/Dismiss Action.

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[1] In the superior court Francie Burnham was the petitioner and Dennis Burnham was the respondent. Since Dennis Burnham is the petitioner in this court, to avoid confusion the documents will refer to "husband" and "wife."

10. June 30, 1988 – Hearing On Husband's Motion To Quash.

11. September 8, 1988 – Findings And Order After Hearing On Motion To Quash Service Of Summons/Dismiss The Action.

12. September 16, 1988 – Wife's Memorandum Of Points And Authorities In Support Of Motion For Reconsideration.

13. September 16, 1988 – Wife's Notice of Motion For Reconsideration Re Order Entered 9/8/88.

14. September 28, 1988 – Verification By Dennis Burnham Of Husband's Reply In Support Of His Motion To Quash Service Of Summons/Dismiss Action.

15. September 28, 1988 – Declaration Of Dennis Burnham In Support Of Husband's Response To Wife's Motion Re Reconsideration.

16. September 28, 1988 – Husband's Memorandum Of Points And Authorities In Opposition To Wife's Motion Re Reconsideration.

17. September 30, 1988 – Hearing On Wife's Motion For Reconsideration.

18. October 5, 1988 – Order Granting Motion For Reconsideration, Vacating September 8 Order, And Denying Motion To Quash.

19. October 13, 1988 – Declaration Of Cecilia D. Lannon In Support Of Ex Parte Request For An Order Vacating The Order Granting Motion For Reconsideration.

20. October 13, 1988 – Husband's Counsel's Declaration And Points And Authorities In Support Of Husband's Motion For Reconsideration/Clarification.

21. October 13, 1988 – Husband's Notice of Motion For Reconsideration/Clarification.

22. October 24, 1988 – Declaration Of Francie Burnham In Opposition To Husband's Motion For Reconsideration/Clarification.

23. October 24, 1988 – Declaration Of Robert L. Nelson In Opposition To Husband's Motion For Reconsideration/Clarification.

24. October 24, 1988 – Wife's Memorandum Of Points And Authorities In Opposition To Husband's Motion For Reconsideration/Clarification.

25. October 24, 1988 – Wife's Responsive Declaration To Husband's Motion For Reconsideration/Clarification.

26. October 27, 1988 – Husband's Reply In Support Of His Motion For Reconsideration/Clarification.

27. October 27, 1988 – Husband's Memorandum Of Points And Authorities In Reply To Wife's Opposition To Husband's Motion For Reconsideration/Clarification.

28. October 31, 1988 – Hearing On Husband's Motion To Reconsider

29. November 4, 1988 – Order Denying Husband's Motion To Reconsider.

30. April 7, 1989 – Decision From The Court Of Appeal Denying Husband's Petition For Writ Of Mandate.

31. June 30, 1989 – Superior Court Minute Order Staying All Proceedings Which Involve In Personam Jurisdiction.

(Filed Jan. 5, 1988)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN

MARRIAGE OF

PETITIONER: FRANCIE BURNHAM

RESPONDENT: DENNIS BURNHAM

PETITION FOR
[X] Legal Separation

CASE NUMBER 1003

2. STATISTICAL FACTS

a. Date of marriage 3-7-76

b. Date of separation: 7-14-87

c. Period between marriage and separation
Years: 11 Months: 4

3. DECLARATION REGARDING MINOR CHILDREN OF THIS MARRIAGE

b. [X] The minor children are:

Name	Birthdate	Age	Sex
Rachel Marie Burnham	10-30-79	8	F
Ari Benjamin Burnham	8-11-85	2	M

* * *

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND OBLIGATIONS AS PRESENTLY KNOWN

b. [ ] All such assets and obligations have been disposed of by written agreement.

d. [X] All such assets and obligations are listed below:

The exact nature and extent and description of the community and quasi-community assets and obligations are currently unknown to the Petitioner. Petitioner will seek leave of this Court to amend this Petition when the same is known to her.

6. Petitioner requests

b. [X] Legal separation of the parties based on (1) [X] Irreconcilable differences. CC 4506(1)

7. Petitioner requests that the court grant the relief or judgment specified in item 6, make injunctive and other orders as may be proper, and that

a. [X] Child custody be awarded
(1) Legal custody
(b) [X] Sole to [X] petitioner

(2) Physical custody
(b) [X] Sole to [X] petitioner

b. [ ] Child visitation rights be granted (*specify*):

c. [X] Child support be awarded [X] petitioner

d. [X] Spousal support be awarded [X] petitioner

e. [X] Property rights be determined.

f. [X] Attorney's fees and costs be awarded [X] petitioner

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on
(date): January 5, 1988

/s/ Francie Burnham
FRANCIE BURNHAM

PROOF OF SERVICE

(Filed FEB. 4, 1988)

1. I served the Summons (Family Law) and Petition (Family Law) on respondent (name): Dennis Burnham

* * *

c. [X] By delivery at [X] home
(1) Date of: January 24, 1988
(2) Time of: 1:25 p.m.
(3) Address: 100 Lovell Avenue
Mill Valley, California

2. Manner of service: (Check proper box)

a. [X] Personal service. By personally delivering copies to the person served. (CCP 415.10)

3. The notice to the person served (item 2 on the copy of the summons served) was completed as follows (CCP 412.30, 415.10, and 474):

a. [X] As an individual

c. [X] By personal delivery on (Date): January 24, 1988

4. At the time of service I was at least 18 years of age and not a party to this action.

6. Person serving

Tracy Kirkham
Hennigan & Mercer
611 West Sixth St., Los Angeles, CA 90017

I declare under penalty of perjury that the foregoing is true and correct and

that this declaration is executed on (date): January 27, 1988 at (place): Los Angeles, California.

/s/ Tracy R. Kirkham
(signature)
TRACY KIRKHAM

(Filed APR. 12, 1988)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN

PETITIONER: FRANCIE BURNHAM

RESPONDENT: DENNIS BURNHAM

NOTICE OF MOTION
[X] Other (specify): TO QUASH SERVICE OF SUMMONS/DISMISS THE ACTION

CASE NUMBER 1003

1. TO (*name*): FRANCIE BURNHAM and her attorney of record ROBERT NELSON

2. A hearing on this motion for the relief requested in the attached application will be held as follows:

a. date: May 5, 1988 time: 9:00 a.m. in dept: 1 rm.:

3. Supporting attachments
d. [X] Points and authorities

Date: April 11, 1988

/s/ Cecilia D. Lannon
(Signature)
CECILIA D. LANNON

FILED
APR 12 1988

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN

In Re: Marriage of	CASE NO. 1003
Petitioner: FRANCIE BURNHAM and Respondent: DENNIS BURNHAM	(Excerpts From) DECLARATION OF RESPONDENT DENNIS BURNHAM IN SUPPORT OF RESPONDENT'S MOTION TO QUASH SERVICE/ DISMISS ACTION

I, DENNIS BURNHAM, declare:

1. That I make this declaration, appearing specially with my attorney of record, in the above referenced matter.

2. That my declaration is filed in support of my motion to quash service of summons in within action, for lack of personal jurisdiction over me, or in the alternative to dismiss said action, pursuant to California Code of Civil Procedure § 418.10 and California Rules of Court § 1234.

* * *

5. My motion is based upon the following facts:

A. Petitioner and Respondent were married on March 7, 1976. During 1976 they purchased land in Hopatcong, New Jersey, upon which they built the home that was their family residence. The parties have lived in New Jersey as residents and domiciliaries of that state since August of 1977. The parties' two children (RACHEL, dob

10/30/79, and ARI, dob 8/11/85) were born in New Jersey and the oldest one, Rachel, has attended school there. Respondent business has its principal office in New Jersey, where his office is located. Virtually all of the parties' family and friends reside in New Jersey. At all times since August, 1977 Respondent has been a resident and domiciliary of New Jersey were he continues to own property, conducts and manage his business, votes, has his New Jersey driver's license, maintains bank accounts, files tax returns, and registers his vehicles, etc. He intends to continue to live in New Jersey permanently, and to maintain his extensive contacts with New Jersey as he always has.

B. On July 8, 1987, Petitioner and Respondent signed a Property Settlement Agreement (attached hereto as Exhibit A) disposing of our real and personal property (marital as well as my separate property), specifying the payment by me of child support and spousal support, allocating responsibility for indebtedness, taxes, etc. This Property Settlement Agreement resolved all of the pending issues between Petitioner and Respondent.

* * *

C. The Agreement recites that all of its terms are to be construed and interpreted according to the laws of New Jersey (page 13). Furthermore, in the event of a dispute regarding custody and visitation, the parties agreed, and the Agreement so recites, that this issue will be submitted to the New Jersey Court for resolution (page two).

* * *

E. Respondent, DENNIS BURNHAM, has no contacts with the State of California which would justify

the exercise of *any* personal jurisdiction over him: Respondent has never been a resident of California and never been a domiciliary there; Respondent has never owned real or personal property in the State of California; never owned or maintained bank accounts or deposits of any kind in the state of California; never had a California driver's license or registered a vehicle in California; never voted in California; never paid taxes of any kind, whatsoever, in California. There is no marital or community property in California. In fact, the marriage itself, and the parties thereto, never had any contact whatsoever with the State of California. All of the marital contact and marital property, as well as rights and obligation, have their nexus with the State of New Jersey; all records incident to the parties' rights and obligations, as well as property, are located there; counsel for each party to the Property Settlement Agreement, as well as to the present New Jersey action reside in New Jersey. The Agreement specifies that New Jersey law is to control in its construction and interpretation, and that the New Jersey Courts are to continue to have jurisdiction exclusively to resolve disputes regarding custody and visitation.

F. * * * Petitioner's attorney, Tracy Kirkham, served Respondent with the California legal separation Petition when he arrived at Petitioner's house to exercise visitation with his children, Ari and Rachel. Were it not for Respondent's strong desire to continue to see his children and to have frequent and on-going contact with them, he would not have been served in California.

* * *

Respondent, therefore, requests the Court to grant his motion and quash service of summons upon him and dismiss the action based on the facts specified above, as well as the applicable law set forth more particularly in Respondent's Points and Authorities filed concurrently with this motion.

Dated: 8 April 1988

/s/ Dennis Burnham
DENNIS BURNHAM,
Respondent

FILED
JUN 23 1988

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

No. FL1003

In re the Marriage of

Petitioner: FRANCIE BURNHAM

Respondent:DENNIS BURNHAM

(Excerpts From) DECLARATION OF PETITIONER FRANCIE BURNHAM IN OPPOSITION TO MOTION TO QUASH SERVICE OF SUMMONS.

I, FRANCIE BURNHAM, declare:

1. I am the Petitioner in the above-referenced matter.

2. The attached document entitled "Affidavit of Francie C. Burnham" executed May 17, 1988 is a true and correct copy of the original Affidavit signed and sworn by me on May 17, 1988 and submitted to the Superior Court of New Jersey on or about May 18, 1988, in connection with an action entitled *Burnham v. Burnham*, Docket No. 8896-88, which was then pending before the Chancery Division, Family Part, Sussex County.

3. I hereby incorporate all statements made in said Affidavit herein as if fully set forth in this Declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct and that this declaration was executed on June 23, 1988.

/s/ Francie Burnham
FRANCIE BURNHAM

ANN O'FLANAGAN & ASSOCIATES
1451 Route 46
Suite 208
Ledgewood, NJ 07852
Telephone: (201) 584-8868

DENNIS BURNHAM, Plaintiff -vs- FRANCIE BURNHAM, Defendant	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION FAMILY PART: SUSSEX COUNTY DOCKET NO. 8896-88 (Excerpts From) AFFIDAVIT OF FRANCIE C. BURNHAM (Executed May 17, 1988)

I, FRANCIE C. BURNHAM, first being duly sworn deposes and states:

1. I am the defendant in the proceeding presently before the Superior Court, for the County of Sussex, State of New Jersey. I am currently residing in the County of Marin, State of California. I make this affidavit from my own knowledge and if called, could and would competently testify to the following facts.

* * *

12. At our April 8 session I told Dennis that I had decided finally that I wanted a divorce and to relocate with the children in California. We discussed the fact that there seemed to be no alternative to this solution, other

than extended therapy, which neither of us was inclined to persue. Dennis agreed that he would assist me in moving to the San Francisco Bay Area.

* * *

48. Dennis's initial visitation with Rachel occurred on the weekend of October 23-25, 1987. They went to the Napa Valley on Friday where Dennis had business (Rachel attended one of the meetings) and had a Saturday morning hot-air balloon ride with a business associate of Dennis's. They returned Sunday. Dennis seemed pleased with the visit.

49. The next visitation, Friday, October 30, 1987, was Rachel's birthday, and Dennis attended the birthday party after having spent the day doing business in the San Francisco area.

50. Their third visitation occured on December 6, 1987, when Dennis took Rachel for the day to the "Lawrence Hall of Science" and for a drive to Napa (about fifty miles from the Bay Area) to pick up some business things Dennis had left there during the weekend in October.

51. In mid-December, I received a letter from Dennis delineating his business and visitation schedules for the upcoming eight months. (See Exhibit "H" hereto.)

* * *

53. On January 18, 1988, around 6:00 p.m. I received a call from Dennis, who was in Los Angeles on business. He told me that he had received a call from his office in New Jersey informing him that his partner, Richard Danziger, had accepted California court papers on his behalf.

* * *

54. Dennis arrived on January 21, 1988, and took the children to the park. The next day, he returned after doing business to take Rachel with him for a weekend in San Francisco. He brought her home on Sunday morning, January 24, 1988. He then spent time at the playground with Ari, and when he was preparing to leave, Tracy, who was visiting, handed Dennis a copy of the California summons.

* * *

56. Dennis arrived April 1, 1988 for his fifth visitation weekend, picking Rachel up on Friday afternoon, and after spending time with both children at Old Mill Park, he and Rachel went into the City to spend the night. Rachel and Dennis returned Saturday morning to take Ari with them for a day at the San Francisco Zoo. They returned Ari Saturday evening, and Rachel again spent the night with her father. Dennis returned Rachel on Sunday, April 3, 1988.

57. Dennis's sixth, and most recent visitation weekend occurred in connection with the "GGASA Showcase of Ideas" convention (April 22, 23, & 24, 1988) held in Monterey, California, about 50 miles south of San Francisco. Dennis arrived on the afternoon of April 22, met Rachel at school, and after visit with her class, flew her (I thought they were driving) to Monterey. His sister, Jackie, and her two-year-old daughter, Michelle, were there. The next day while Dennis did business, Jackie, Michelle and Rachel visited the Monterey Aquarium. That evening

Dennis took Rachel to a trade show dinner at the aquarium. They returned via "Great America" amusement park on Sunday.

* * *

Further, affiant sayeth not.

Dated: May 17, 1988

/s/ Francie C. Burnham
Francie C. Burnham

CASE NUMBER: FL 1003
Filed Sep. 8, 1988

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN

PETITIONER: FRANCIE BURNHAM
RESPONDENT: DENNIS BURNHAM

FINDINGS AND ORDER AFTER HEARING

* * *

Motion to Quash Service of Summons/Dismiss the Action

This proceeding was heard as follows:

1. Date: 6-30-88
   Dept: 6
   Judge: Richard H. Breiner
   Attorney present in court: Robert L. Nelson
   Attorney present in court: Cecilia D. Lannon

* * *

On the Motion filed 4-12-88

By: Respondent Dennis Burnham

2. Evidence was presented and the matter was submitted.

* * *

19. Respondent's Motion to Quash Service of Summons and to Dismiss is denied, since the Court finds that it has jurisdiction over the marital status, and therefore summons cannot be quashed. However, the

court finds that it has no personal jurisdiction over respondent over any other issue except for marital status.

Date: September 8, 1988

/s/ Richard H. Breiner
JUDGE OF THE SUPERIOR COURT

* * *

FILED Sep. 28, 1988

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

In Re: Marriage of Petitioner: FRANCIE BURNHAM AND Respondent: DENNIS BURNHAM	CASE NO. FL 1003 (Excerpts From) DECLARATION OF DENNIS BURNHAM IN SUPPORT OF RESPONDENT'S RESPONSE TO PETITIONER'S MOTION RE RECONSIDERATION

I, DENNIS BURNHAM, declare:

1. I am the Respondent in this matter and continue to appear specially by and through my attorney of record, CECILIA D. LANNON.

2. I make this statement with regard to the motion filed on behalf of Petitioner, FRANCIE BURNHAM, for reconsideration of the order filed September 8, 1988 with regard to Respondent's motion to quash service of summons and to dismiss.

* * *

5. * * * This declaration in response to said motion will be directed at the implication contained in Petitioner's Memorandum of Points and Authorities that I have had "a regular pattern of visits to California", and that these visits have been for any purpose other than visitation. As can be seen by the chronology set forth below, there is no regular pattern of visitation since Petitioner, Francie, has continually interfered with my visitation with my two children, RACHEL age 9, and ARI age

3. I never have had any personal or business reason to travel to California other than to visit with my children. The following chronology, set forth in paragraph 7 below, details my visitation.

6. With regard to my business, I am Chairman of the board of Roburn International Corp. (my own business), a New Jersey corporation, with offices and facilities in New Jersey and nowhere else. As stated in my declaration in support of my original motion to quash service of summons and dismiss, I have no business license to do business in California, I pay no sales tax in California, I have never filed an income tax return in California, I have no business address in California, I do not have a California license, and, in fact, have absolutely no contacts whatsoever with California, with the exception of coming here to visit my children.

7. * * * In December, there was a national sales meeting in Las Vegas, Nevada, held by one of our Minnesota customers. I attended the event in Nevada so that I could squeeze in a brief Sunday visit with my children in California before returning home on an overnight flight. The business was conducted in Nevada, not in California.

* * *

In January, Francie permitted me to take Rachel on a weekend trip to downtown San Francisco on January 23-24. Again, she denied my visitation with Ari. I brought Rachel home, as promised, on Sunday, January 24. At that time Tracy Kirkham served me with the summons and petition for legal separation, that is the subject of these

proceedings. I was served in Francie's home in Mill Valley, specifically at the conclusion of my visitation with Rachel.

* * *

I declare under penalty of perjury the above is true and correct. Executed this 28th day of September, 1988, at Elmwood Park New Jersey 07407.

/s/ Dennis Burnham
DENNIS BURNHAM, Respondent

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

In re the Marriage of Petitioner: FRANCIE BURNHAM and Respondent: DENNIS BURNHAM	No. FL 1003 ORDER GRANTING MOTION FOR RECONSIDERATION, VACATING SEPTEMBER 8 ORDER AND DENYING MOTION TO QUASH Filed Oct. 5, 1988

Having heard petitioner's motion to reconsider and reviewing the entire file, including particularly the order of the New Jersey Superior Court refusing to exercise jurisdiction and the statement of reasons set forth in the June 3, 1988 order of that Court, and for good cause,

IT IS HEREBY ORDERED:

1. That petitioner's motion for reconsideration is granted.
2. That on reconsideration, this Court's Order filed September 8, 1988 is vacated.
3. That respondent's motion to quash is denied in its entirety.
4. That the court finds, based on the evidence submitted, that it has jurisdiction, both *in rem* and *in personam*, over the subject matter and the parties, respectively.

DATED: OCTOBER 5, 1988

/s/ Richard H. Breiner
RICHARD H. BREINER
Judge of the Superior Court

Filed October 24, 1988

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

In re the Marriage of Petitioner: FRANCIE BURNHAM Respondent: DENNIS BURNHAM	No. FL 1003 (Excerpts From) DECLARATION OF FRANCIE BURNHAM IN OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION/ CLARIFICATION

I, FRANCIE BURNHAM, hereby declare that:

1. I am the Petitioner in the above-entitled matter and I make this declaration as part of my response to Respondent's motion for reconsideration/clarification which is to be heard in this Court on October 31, 1988.

* * *

4. I was amazed to read Dennis Burnham's statement (Declaration of Dennis Burnham in Support of Respondent's Response to Petitioner's Motion Re Reconsideration, page 3) that, "I have never had any personal or business reason to travel to California other than to visit with my children." That statement is absolutely false. For example, by letter dated December 12, 1987, and written in his own hand (a copy of which is attached hereto as Exhibit A) Dennis Burnham told me that on April 21 through 24, 1988, he would " . . . be in the Bay Area on business." The truth is that Dennis did come to the Bay Area on those dates to attend the GGASA Showcase of Ideas convention held in Monterey. Dennis took

our daughter, Rachel, to Monterey with him and after their return Dennis told me that while he had attended to business Rachel had visited the Monterey Aquarium with her Aunt Jackie (Dennis' sister), and her Cousin, Michelle, and that he had taken Rachel and a business friend, Jim Coyle, to a trade show dinner at the Aquarium in connection with the convention. When Rachel returned home after the weekend she brought several specialty advertising items including an imprinted balloon. Also, on the weekend of October 24, 1987, when Dennis took Rachel with him to the Napa Valley he told me that he was conducting a business seminar that weekend on speciality advertising, a seminar which Rachel attended as she spent the weekend with him in Napa. As a matter of fact, Dennis attended at least one business presentation or seminar in California every year during our marriage, except for 1984. Dennis apparently spent the entire week following the October 24, 1987, Napa seminar in California as he attended Rachel's eighth birthday party on the weekend of October 31, 1987. After the birthday party Dennis told us that he was flying down to the Los Angeles area to visit with his sister, Jackie, and her family.

5. It is interesting that Dennis was quite explicit (page 5 of his September 28, 1988 Declaration) regarding the business meeting he attended in Las Vegas in December of 1987 but he lacks a similar explicitness in the very next paragraph regarding his January 1988 visit to California. In the evening of January 18, 1988, Dennis telephoned me and said that he was in Los Angeles on business and that he intended to come to the Bay Area in a couple of days to visit the children. In fact, Dennis

arrived in Mill Valley on January 21, 1988, and took the children to the park. The next day when he came to take Rachel for the weekend, he mentioned that he had been attending to some business in San Francisco.

6. The foregoing examples are by no means a complete rendition of all of Dennis Burnham's personal and/or business activities in the State of California. If called upon to do so I could and would testify competently to the specifics of numerous trips to California by Dennis, on some of which I accompanied him during the last ten years. I believe, however, that these examples do serve to show the falsity of the statements made in his declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: October 24, 1988.

/s/ Francie Burnham
FRANCIE BURNHAM

Filed Oct. 27, 1988

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

In Re: Marriage of	CASE NO. FL 1003 (Excerpts From) RESPONDENT'S REPLY IN SUPPORT OF HIS MOTION FOR RECONSIDERATION/ CLARIFICATION OF THE OCTOBER 5, 1988 ORDER RE JURISDICTION
Petitioner: FRANCIE BURNHAM	
and	
Respondent: DENNIS BURNHAM	

I, Dennis Burnham declare that:

1. I am the Respondent appearing specially in the above entitled matter and I make this declaration in reply to the response filed herein on behalf of Petitioner to my Motion for Reconsideration/Clarification of the October 5, 1988, Order re Jurisdiction filed herein.

2. This Reply Declaration is directed toward the points raised in the declaration of Petitioner Francie Burnham filed in support of her response to my motion.

* * *

4. Petitioner, Francie Burnham's, declaration regarding Respondent's "contacts" with the State of California is false. Petitioner knows that Respondent has, since she removed the children to California, always attempted to schedule some California "business" around times when he wants to be with the children. For example, at school open house, summer vacation, birthdays, etc. He does this to take advantage of whatever tax

benefits remain under the tax laws. The "business" he conducts consists of *attendance* at trade shows – very similar to attorneys who attend conferences in other states. He is able to write off, for tax purposes, a part of his trip for "business", but he is participating in and attending trade shows. This does not constitute "doing business" and does not amount to constitutionally sufficient contacts which would subject him to *in personam* jurisdiction in California. Petitioner's declaration is false in that it asserts and attempts to imply that Respondent was conducting business in California, and that rather than visitation was his purpose. This is untrue. Petitioner's allegation that she accompanied him on business trips is also false. She has refused to travel anywhere with him for business or pleasure since the birth of their children over 9 years ago. She has absolutely no information about Respondent's alleged business trips.

In addition, Respondent has family in Southern California, and, has travelled to Southern California to visit his relatives who moved here *after* the parties' separation. Again, the purpose of the visit, as have all of his trips to California been, was to visit his children and his family. He would, of course, schedule attendance at trade shows, lectures, etc. to take advantage of tax write-offs.

* * *

5. Petitioner's allegation that she knows more about Respondent's business than her declaration recites is false. If called upon to testify, Respondent would testify confidently and truthfully to the specifics of his contacts in the State of California, to the fact that trips to California have always been for the purpose of visiting his children who have been removed from the State of New

Jersey by Petitioner. He has been fortunate to be able, on some occasions, to schedule attendance at trade shows, etc., in order to defray part of the extraordinary expense visitation with his children necessitates.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27 day of October, 1988, at San Rafael, California.

/s/ Dennis Burnham,
DENNIS BURNHAM, Respondent

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN

In Re: Marriage of	) No 1003
Petitioner: FRANCIE BURNHAM	) ORDER DENYING MOTION TO RECONSIDER AND CLARIFY
and	)
Respondent: DENNIS BURNHAM	) Filed Nov. 4, 1988

I have reviewed the authorities cited at the time of argument and find no valid reason to modify my October 5 order.

Accordingly, respondent's motion to reconsider and to clarify is denied.

DATED: November 4, 1988

/s/ Richard H. Breiner
Richard H. Breiner
Judge of the Superior Court

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION FIVE

DENNIS BURNHAM, Petitioner, v. SUPERIOR COURT, COUNTY OF MARIN, Respondent, FRANCIE BURNHAM, Real Party in Interest.	A044090 Marin County Superior Court No. FL1003 Filed APR -7 1989

BY THE COURT:

After full briefing and consideration of the issues raised therein, as well as the court's independent research, the petition for writ of mandate is denied. The court concludes that personal presence continues to be a valid jurisdictional predicate for *in personam* jurisdiction, and that *Shaffer v. Heitner* (1977) 433 U.S. 186 does not compel a contrary conclusion. As the trial court noted, no California or United States Supreme Court case has applied *Shaffer's* "minimum contacts" analysis to a defendant present in the forum state and personally served with process. Those cases which have considered the issue have ruled that *Shaffer* does not preclude a finding of personal jurisdiction based on presence. (See, e.g., *Amusement Equipment, Inc. v. Mordeldt* (5th Cir. 1985) 779 F.2d 264; *Aluminal Industries v. Newtown Commercial Assoc.* (S.D.N.Y. 1980) 89 F.R.D. 326; *Cariaga v. District Court*

(Nev. 1988) 762 P.2d 886; *Oxmans' Erwin Meat Co. v. Blacketer* (Wis. 1979) 273 N.W.2d 285; see also *Donald Manter Co., Inc. v. Davis* (1st Cir. 1976) 543 F.2d 419.)

In light of the evidence presented to the trial court that petitioner's presence within California was for the dual purposes of visitation and conducting business activities, the imposition of personal jurisdiction in this case will not act to discourage parental visitation. (Cf. *Judd v. Superior Court* (1976) 60 Cal.App.3d 38, 45.)

Dated APR - 7 1989

King, J.

ACTING
P.J.